

BOSTON REDEVELOPMENT AUTHORITY

REPORT AND DECISION ON THE APPLICATION DATED AUGUST 5, 1981 (THE "APPLICATION TO AMEND AND TERMINATE") BY DAVID BARRETT AND ROBERT DeGAETA, AS THEY ARE TRUSTEES OF THE COMMERCIAL BUILDING TRUST, CREATED UNDER A DECLARATION OF TRUST DATED OCTOBER 23, 1978, TO AMEND THEIR ORIGINAL APPLICATION (THE "APPLICATION"), DATED OCTOBER 25, 1978, AND ENTITLED "APPLICATION OF DAVID BARRETT AND ROBERT DeGAETA, TRUSTEES, FOR AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASS. G.L. CHAPTER 121A, AS AMENDED, AND UNDER ST. 1960, c.652, AND FOR CONSENT, TO THE ORGANIZATION OF COMMERCIAL BUILDING TRUST AS PROJECT OWNER" AND TO TERMINATE APPROVALS HERETOFORE GIVEN BY THE BOSTON REDEVELOPMENT AUTHORITY PURSUANT TO THE APPLICATION.

A. The Hearing. A duly posted meeting open to the public was held at 2 PM on August 6, 1981 in the offices of the Boston Redevelopment Authority (the "Authority") at the New City Hall, Boston, Massachusetts concerning the referenced matter.

B. Authority Action and Decision. In acting hereunder, the Authority has considered the matters set forth in the Application to Amend and Terminate and additional material sufficient, in the Authority's judgment, to enable it to act as set forth herein. Accordingly:

A. The Authority hereby amends the Application by adding thereto the following paragraph:

"11. Termination

Upon request of the Applicants, the Authority may terminate any approvals now or hereafter given by the Authority relative to the Project, the effective date of such termination to be such date as may be requested by the Applicants and approved by the Authority. Following any such termination, the Project shall no longer be subject to the provisions of Chapter 121A of the General Laws of the Commonwealth of Massachusetts or of Chapter 652 of the Acts of 1960, both as amended, and thereafter shall neither enjoy the benefits of nor be subject to the provisions of said laws or regulations thereunder or of any permissions, approvals, contracts or other documents given or executed pursuant thereto relative to the Project."

B. The Authority hereby terminates its Report and Decision, approved February 1, 1979, and entitled "REPORT AND DECISION ON THE APPLICATION OF COMMERCIAL BUILDING TRUST FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS (TER. ED.) CHAPTER 121A AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960, TO BE UNDERTAKEN AND CARRIED OUT BY A TRUST FORMED UNDER M.G.L. CHAPTER 172, AND APPROVAL TO ACT AS AN URBAN REDEVELOPMENT CORPORATION UNDER SAID CHAPTER 121A".

The Authority further terminates all other permissions, approvals, contracts or other documents given or executed which subject the Project (as defined in the Application) to the provisions of Mass. G.L. Chapter 121A and Chapter 652 of the Acts of 1960, both as amended.

The foregoing termination shall be effective beginning September 1, 1981.

APPLICATION TO AMEND AND TERMINATE

This is an application by David Barrett and Robert DeGaeta, as they are Trustees of the Commercial Building Trust, created under a declaration of trust dated October 23, 1978, to amend their original application (the "Application"), dated October 25, 1978, and entitled "APPLICATION OF DAVID BARRETT AND ROBERT DeGAETA, TRUSTEES, FOR AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASS. G.L. CHAPTER 121A, AS AMENDED, AND UNDER ST. 1960, c.652, AND FOR CONSENT, TO THE ORGANIZATION OF COMMERCIAL BUILDING TRUST AS PROJECT OWNER" and to terminate approvals heretofore given by the Boston Redevelopment Authority pursuant to the Application.

1. Application is hereby made to amend the Application by adding thereto the following paragraph:

"11. Termination

Upon request of the Applicants, the Authority may terminate any approvals now or hereafter given by the Authority relative to the Project, the effective date of such termination to be such date as may be requested by the Applicants and approved by the Authority. Following any such termination, the Project shall no longer be subject to the provisions of Chapter 121A of the General Laws of the Commonwealth of Massachusetts or of Chapter 652 of the Acts of 1960, both as amended, and thereafter shall neither enjoy the benefits of nor be subject to the provisions of said laws or regulations thereunder or of any permissions, approvals, contracts or other documents given or executed pursuant thereto relative to the Project."

2. On February 1, 1979, responding to the Application, the Boston Redevelopment Authority approved a Report and Decision entitled "REPORT AND DECISION ON THE APPLICATION OF COMMERCIAL BUILDING TRUST FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS (TER. ED.) CHAPTER 121A AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960, TO BE UNDERTAKEN AND CARRIED OUT BY A TRUST FORMED UNDER M.G.L. CHAPTER 172, AND APPROVAL TO ACT AS AN URBAN REDEVELOPMENT CORPORATION UNDER SAID CHAPTER 121A".

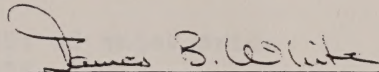
Application is also hereby made to terminate said Report and Decision, and to terminate all permissions, approvals, contracts or other documents given or executed which subject the Project to the provisions of Mass. G.L. Chapter 121A and Chapter 652 of the Acts of 1960, as amended, such termination to be effective beginning September 1, 1981.

3. In support of this Application to Amend and Terminate the Applicants note the following:

A. The Applicants, in pursuance of completing the Project, acquired premises at 126-144 Commercial Street and have completed all of the extensive renovation work required fully to rehabilitate and restore such premises. Thus, those premises have been converted from a vacant, fire-damaged commercial structure to market-rate residential apartment units, with a limited amount of commercial space on the ground floor, all in accordance with plans approved by the Boston Redevelopment Authority.

B. The Applicants currently intend to market said premises as a condominium instead of rental units. Should the requests herein be granted, marketing of said premises as a condominium would result in a significant increase in revenues to the City as the exemption from real estate taxes and the limited excise to be paid under Mass. G.L. Chapter 121A would no longer be applicable. Such revenues would continue to rise in accordance with future increases in tax rates or assessments.

Executed this 5th day of August, 1981.



James B. White, attorney for
David Barrett and Robert
DeGaeta, trustees, as aforesaid,
and not individually

Attachment A

COMMERCIAL BLOCK

COMPARISON OF TAXES DUE ON RENTAL INCOME UNDER
121A AGREEMENT WITH PROBABLE TAX REVENUES AFTER
CONVERSION TO CONDOMINIUM OWNERSHIP

I. Current Revenue Estimate

Current Annual Rent Roll

Residential	\$ 255,780
Commercial	28,662
TOTAL	\$ 284,442

Tax per 6A Formula*

\$ 51,466

*(20% of residential "rental income" plus 30% of commercial "rental income" plus 10% surcharge on excess over \$260,000. In each case, taxes due are deducted from rent roll to determine the "rental income" subject to the stated percentages.)

II. Revenue as Condominium

Assume: (1) assessment @ 25% of sales price
(2) current tax rate
(\$272.70/\$1000, fiscal year 1980-1981)

<u>If Average Sales Price Is:</u>	<u>Expected Assessment*</u>	<u>Projected Tax Revenue</u>
\$90/s.f.	\$ 810,045	\$ 220,899
\$100/s.f.	900,050	245,444
\$110/s.f.	990,055	269,988

*Based on approximately 36,002 s.f. of area comprised of 33 apartments (33,562 s.f.) and 2,440 s.f. of commercial area.

III. Projected Tax Revenue Increase

Assuming sales of condominiums in the \$90-\$110/s.f. price range, current annual tax revenue to the City would be increased by between \$ 170,000 and \$ 218,000 per year.

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JOHN A. PERKINS
JAMES W. PERKINS
CASIMIR DE RHAM, JR.
DANIEL O. HANONEY
GEORGE I. MULHERN, JR.
ROBERT P. MONCREIFF
ERIC VERRILL
JAMES L. TERRY
ROBERT J. MCGEE
DAVID F. CAVERS, JR.
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VIRGINIA ALDRICH
STANLEY KELLER
MARY G. SULLIVAN
ACHESON H. CALLAGHAN, JR.
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RICHARD B. OLSON
NEIL P. ARKUSS
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RUSS V. V. BRADLEY, JR.
TURNER C. GRAYBILL
ARTHUR B. PAGE
STEVEN SCHRECKINGER
LAURIE S. GILL
E. JOAN BLUM
H. VIRGINIA MCINTYRE

DOUGLAS H. WILKINS
MARJORIE HEINS
FRANCIS E. ACKERMAN
ANDREA L. DAVIS
KATHLEEN C. FARRELL
PERRY E. ISRAEL
CATHY J. PORTER
THOMAS G. SCHNORR, JR.
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HEIDI URICH
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CHARLES C. WOLF

ROBERT F. BRADFORD
TALCOTT M. BANKS
ROBERT I. MUNNEMAN
COUNSEL

CABLE ADDRESS "STOREYDIKE" BOSTON

September 2, 1981

HAND DELIVERY

Boston Redevelopment Authority
City Hall
1 City Hall Plaza
Boston, Massachusetts 02201

Re: Commercial Block

Gentlemen:

This letter is intended to respond briefly to the question of whether the BRA possesses the power to allow early termination of the applicability of M.G.L. c. 121A and other laws to a project previously approved thereunder. Support for the existence of that power can be found in the statutes, cases and the compelling need of the BRA therefor. This question has arisen in connection with the pending application of the Trustees of the Commercial Block, the essence of which is to allow the sale of individual condominium units free of M.G.L. c. 121A tax benefits and income restrictions.

M.G.L. c. 121A, Section 11 authorizes the BRA to approve the sale of a project or any part thereof. However, in such a situation, the statute states that no changes in the benefits and restrictions imposed under c. 121A shall be valid unless approved by the BRA. Under this provision, it is clear that, in the event of a proposed sale, there can be changes to an existing 121A approval if consented to by the BRA. There is reason to believe that such changes include complete termination in appropriate circumstances. Those circumstances should include situations, like the Commercial

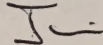
September 2, 1981

Block, where original cost estimates have been exceeded for causes beyond the control of the applicant and beyond the original expectations of both the BRA and the applicant, with the result that undue economic hardship has resulted and should not be allowed to continue. A further fact supporting early termination in such event is that the revenues to be subsequently derived by the City of Boston will far exceed those required to be paid under M.G.L. c. 121A. Support for termination in these circumstances is contained in M.G.L. c. 121A, Section 16A, which expressly allows for early termination, with the approval of the BRA, if the economics of a project will not enable it to continue.

The fact that M.G.L. c. 121A does not expressly provide generally for early termination should not be taken to mean that the BRA has no power to act on a request therefor. As you know, there are cases stating that administrative agencies have, beyond their express powers, such implied powers as are reasonably necessary for their proper function in carrying out and accomplishing the purposes of such agencies. See Vose v. Dean, 7 Mass. 280 (1811), Hathaway Bakeries v. Labor Relations Comm., 316 Mass. 136 (1944). It is beyond question that the power to grant early termination is one which the BRA should possess in order to be able, over the course of time, properly to administer projects originally constructed with 121A approval, given that unanticipated changes will necessarily occur. The cited cases provide a basis for finding that the BRA does possess this necessary administrative power.

I hope you will find this helpful.

Cordially,



James B. White

JBW/mg

cc: Messrs. Linde and Barrett

COMMERCIAL BUILDING TRUST

REGULATORY AGREEMENT

Pursuant to Mass. G.L. c. 121A, sec. 18C

This Agreement made this *14th* day of *MARCH*, 1979, by and between David Barrett and Robert DeGaeta as they are Trustees of the Commercial Building Trust created under a declaration of trust dated October 23, 1978, (the "Owner") and the BOSTON REDEVELOPMENT AUTHORITY (the "Authority").

WHEREAS, the Owner has filed with the Authority an application dated October 25, 1978, (the "Application"), for approval under Chapter 121A of the Massachusetts General Laws and Chapter 652 of the Acts of 1960, as amended, to undertake and carry out the construction of 34 units of housing together with approximately 2,000 square feet of retail and commercial space, (the "Project") to be undertaken in Boston, Massachusetts, which Project was approved by vote of the Authority on February 1, 1979.

WHEREAS, pursuant to the provisions of Section 18C of said Chapter 121A, the Owner is required to enter into a Regulatory Agreement with the Authority.

NOW, THEREFORE, the Owner agrees for itself, its successors and assigns with the Authority as follows:

1. To finance the Project as stated in the approved Application and so long as Chapter 121A shall be applicable to the Project, all other future financing shall be made only with the prior written approval of the Authority.
2. To keep the accounts for the Project separate and apart from any other activities conducted by the Owner and not to expend income from the Project other than earnings as described in Chapter 121A, section 18C(e) of the General Laws upon or for the benefit of any other of its activities.
3. To comply with the provisions contained in Chapter 121A, section 8, relative to the inspection of buildings and enforcements of compliance with the financing program and rules and regulations applicable to the Project.
4. That the beneficiaries of the Trust will not receive or accept, while this Regulatory Agreement is in force, as net income from the Project, any sum in excess of eight per cent (8%) of the amount invested by them in the Project for each year in which they own or have owned the Project, except that, if in any year they have so received a sum less than the aforesaid amount they may so receive in a subsequent year

or years, additional sums not exceeding in the aggregate such deficiency, without interest. Nothing contained in this paragraph, however, shall be applicable to the realization of profits from the sale of capital assets of the Trust. The amount determined to be the amount invested in the Project for purposes of this paragraph 4 and other definitions relating to the allowable distributions from the Project are as described in Exhibit 12 annexed to the Application.

5. That in consideration of the exemption of the Owner and all its real and personal property from taxation and from betterments and special assessments and from the payments of any tax, excise or assessment to or for the Commonwealth or any of its political subdivisions on account of the Project, that it will pay the excises with respect to the Project which a Chapter 121A Entity would be bound to pay under the formulae and provisions set forth in Section 10 of said Chapter 121A and agreed upon between the parties as outlined in the executed 6A Tax Agreement.

6. Subject to the provisions of paragraph 7 of this Regulatory Agreement, this Regulatory Agreement shall continue for a term of fifteen (15) years from the date of approval of the Project which is the subject matter of this Regulatory Agreement. Subject to the Owner having carried out the obligations and duties imposed by said Chapter 121A for a period of fifteen (15) years from the date of such approval, neither the Project nor the Owner shall thereafter be subject to the obligations of said Chapter 121A nor enjoy the rights and privileges thereunder, nor be subject to the terms, conditions and obligations of this Regulatory Agreement as provided for in Section 18C of said Chapter.

7. If the Owner, or the Owner's Mortgage lender propose, acting either under the provisions of the last paragraph of Section 11 or under Section 16A of said Chapter 121A, to transfer the Project to a different entity, the Regulatory Agreement shall, upon transfer, be terminated, and a new Regulatory Agreement entered into.

8. This Regulatory Agreement shall be binding upon and the benefits hereunder shall inure to the Owner and their successors in trust and the beneficiaries of the Trust. Neither the Trustees nor their successors in trust nor any beneficiaries at any time of the Trust shall have any personal liability under the terms of this Regulatory Agreement.

9. The Owner agrees for itself and its successors-in-interest in title to the property, for the life of the Project that there will be no use of the property made involving the sale of alcoholic beverages or the sale of wine or beer and the Owner acknowledges that such restriction is an express condition of this Regulatory Agreement.

10. The undersigned do hereby covenant with and agree with the Boston Redevelopment Authority that they will not voluntarily transfer, assign, convey or sell or in any manner hypothecate their respective interests as Trustees in the Project prior to the completion of the Project without the express written consent and approval of said Authority and that as a condition to any request to permit a transfer of such interest they will cause such transferee or assignee to enter into a written agreement in form and manner reasonably satisfactory to the Authority wherein such assignee or transferee agrees to assume and be bound by the terms and provisions of this Regulatory Agreement.

11. Prior to completion, any transferee or any person or entity succeeding to the rights and obligations and interest of the respective Trustees in the Project by operation of law, testamentary disposition, intestacy or insolvency or otherwise shall, at the option of the Authority, be deemed to have been covenanted and agreed to be bound by the terms, covenants and conditions of the within agreement.

12. The Owner shall follow the time table set forth in the approved application. If the project does not commence within one (1) year, the Authority reserves the right to rescind the Project approval in the event an extension has not been requested and approved.

13. Upon completion of Project construction, the Authority shall, upon notification by the Owner, inspect the project to determine if it has been built in accordance with the 121A submissions and approval. Certification evidencing compliance with 121A approval shall be filed with the Clerk of the City of Boston by the Owner.

14. (a) The Owner agrees that it will (1) maintain full and accurate accounts, records and books relative to the Project in such manner and in such detail as the Authority may prescribe; (2) grant to the employees or representatives of the Authority at all times during normal business hours access to the Project and to such of its accounts, records, and books as related to the Owner's obligations under this Regulatory Agreement or Chapter 121A; (3) permit said Authority or any accountants or auditors approved by them to make periodic audits of the accounts and financial records of the entity which shall at all times be available in the Commonwealth of Massachusetts; and (4) furnish to said Authority such financial, operating, statistical and other reports, records, statements and documents on a uniform and consistent basis as may be periodically or on a one-time basis required by said Authority and copies of contracts entered into by the Owner or other documents in the possession of the Owner as said Authority may from time to time require in connection with the Owner's obligations under this Regulatory Agreement or Chapter 121A.

(b) Any notices given pursuant to this Regulatory Agreement shall be in writing. Such notices shall be either mailed by registered mail (postage and registration charges prepaid) or served by an officer authorized to serve civil process. Notices to the Authority shall be mailed to or served upon a member, officer or designee of the Authority at its principal office. Notices to the Owner shall be mailed to or served upon one of the Trustees or their designees at the principal office of the Owner. The principal office of the Authority shall be deemed to be One City Hall Square, Boston, Massachusetts, or such other place as said Authority may designate by written notice to the Owner; and the principal office of the Owner shall be deemed to be 133 Federal Street, Boston, Massachusetts, or such other place as the Owner may designate by written notice to the Authority.

15. The Applicant shall cause the Project to be constructed in good and workmanlike manner employing materials of good quality and so as to conform to this Application, zoning, building, health and fire laws, codes, ordinances and regulations in effect in Boston except to the extent that permissions are granted by the Authority for deviations therefrom. Compliance by the Applicant with such laws, codes, ordinances and regulations as the same may be varied by said permission for deviations shall, subject only to judicial review, be determined by the Building Department of the City of Boston and all inspections to determine such compliance shall be conducted by it.

16. Upon completion of construction, the Applicant shall, at its own cost and expense, keep and maintain the Project or cause it to be kept and maintained, in good repair, order and condition.

17. The Applicant may manage the Project itself or employ an independent contractor to undertake such amangement. The compensation paid by the Applicant for such management shall not exceed 8% of the gross rentals derived from the Project.

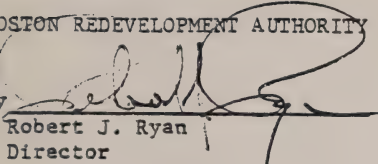
18. Gross Income from the project shall mean the aggregate of gross basic rentals received by the Owner from whatever source derived, including the occupants of the project and all other income received by the Owner.

19. All changes, deviations, alterations, or additions in the Project are subject to complete review and approval by the Authority. Failure to comply with the provision constitutes a violation of the 121A approval and subjects the Project to 121A approval rescision at the election of the Authority.

EXECUTED, as a sealed instrument.

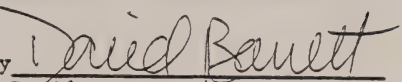
BOSTON REDEVELOPMENT AUTHORITY

By

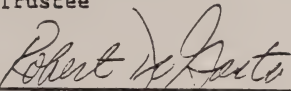

Robert J. Ryan
Director

COMMERCIAL BUILDING TRUST

By

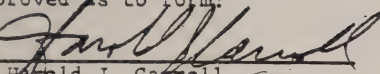

David Barrett
Trustee

By


Robert DeGaeta
Trustee

Approved as to form:

By


Harold J. Carroll
Chief General Counsel

Boston Properties

MEMORANDUM

TO Ed Linde DATE August 19, 1981
FROM David Barrett SUBJECT Commercial Block
C.C.

Here is a summary of my conversation with Jim Whalen about the impact of 2½ on 121A and my analysis of the situation:

1. There is a "phase down" provision of 2½ for cities where current tax revenue exceeds 2½% of Full Fair Cash Value (FFCV), requiring a 15% annual reduction in tax revenue until the 2½ is achieved. Where property is currently assessed on other than an FFCV basis, total FFCV value is estimated through an equalized valuation calculation using the "Disproportionate Percentages" calculated for each city each year by the State Revenue Department.

Boston falls under this heading; its "disproportionate percentage" for FY 1981 was 33.1%--i.e., that was the ratio of total A.V. on the tax rolls to estimated A.V. on an FFCV basis.

This phase-in (and all of 2½) is being implemented as of 7/1/81 with FY 1981 as the base year--so that assuming no change in total A.V., the FY 1982 tax rate would be \$272.90 x 85%--about \$232/\$1000.

2. Assuming a condo sell-out at \$4,000,000 and assessment at 25% of sale, the result for FY 1982 (on an assumed full year basis) would be:

A.V.	\$1,000,000	
Tax Rate	\$232	
Tax		\$232,000

3. Under the phase-in, and assuming no change in Boston's total A.V., it would nominally take 7 years of 15% reductions to reach the 2½ level, and tax revenues from the Commercial Block would decline at the same rate, so that there would be a \$74/\$1000 rate and \$74,000 in taxes in FY 1989. However, this would be offset by the extent of increases in property values; Whalen believes that the State will require at least bi-annual and possibly annual reassessments, which assumedly would reflect the increase in property values. Assuming a 5% to 10% annual increase, the phase-in period would actually take only 4 to 5 years (as estimated in the calculation attached to this memo).

Taking the above into account, there would be a decreasing revenue series for the Commercial Block until the tax rate reached its stabilization point in 4 to 5 years; at this point taxes could increase again, assumedly at the 2½%/year limit. However, these limits would be partially offset by any increases in A.V. on the building--which might result from any combination of (1) revaluation on resales of units, (2) the city-wide revaluation scheduled for 1984, or (3) any annual revaluation of the building if this becomes city-wide standard practice. Assuming we could argue that an annual increase of 5 - 10% of A.V. would result this way, the series would be as follows based on a starting A.V. of \$1,000,000:

<u>FY</u>	<u>Tax Rate*</u>	<u>Taxes At 5% Rate</u>	<u>Taxes At 10% Rate</u>
1982	232	\$ 232,000	\$ 232,000
1983	197	207,000	217,000
1984	168	185,000	203,000
1985	142	164,000	189,000
1986	121	147,000	177,000
1987	103	131,000	166,000

*Tax rate stated on nominal 1981 basis; actual rate would reflect revaluation to FFCV in 1984 but not affect tax estimates above.

This would compare to a 121A series for the same period (forgetting for a moment about the difference in the calendar year versus fiscal year base) as follows, based on the same range of increases (here applied to rent levels):

<u>Calendar Year</u>	<u>121A Taxes</u>	
	<u>At 5%</u>	<u>At 10%</u>
1981	\$ 51,466	\$ 51,466
1982	54,000	57,000
1983	57,000	62,000
1984	60,000	69,000
1985	63,000	75,000
1986	66,000	83,000
1987	69,000	91,000

(Note: based on 1981 taxes of \$51,466 as estimated by us to BRA in our application for termination--see copy of Attachment A, enclosed.)

If we took the "conservative" position that rents under 121A would go up 10% per year while the building's assessment under 2½ would only go up 5% a year, the difference on a fiscal year basis would be as follows:

<u>FY</u>	<u>Condo Revenue</u>	<u>121A Revenue*</u>	<u>Difference to City</u>
1982	\$ 232,000	\$ 54,000	\$178,000
1983	207,000	60,000	147,000
1984	185,000	66,000	119,000
1985	164,000	72,000	92,000
1986	147,000	79,000	68,000
1987	<u>131,000</u>	<u>87,000</u>	<u>44,000</u>
	\$1,066,000	\$418,000	\$648,000

*adjusted from calendar year to FY

By fiscal year 1987 the City would be some \$650,000 ahead based on these assumptions. The 121A agreement expires in any event on 2/20/94--i.e., effectively after FY 1994.

MEMORANDUM

SEPTEMBER 3, 1981

TO: BOSTON REDEVELOPMENT AUTHORITY 4109

FROM: ROBERT J. RYAN, DIRECTOR 913

SUBJECT: AMENDMENT TO REPORT AND DECISION ON 121A APPLICATION OF
COMMERCIAL BUILDING TRUST PROVIDING FOR THE TERMINATION
OF 121A APPROVALS RELATING TO THE PROJECT

Subsequent to our previous memorandum and deliberation on this matter, the applicants have submitted the attached opinion of their counsel, Palmer and Dodge, clarifying that the Authority does possess the power to grant a termination of a previously approved 121A project. We believe this power inherent in the statute and necessary for the Authority to properly administer the projects.

It should be noted that the Authority's Regulatory Agreement, as required by statute and as executed by the developers, provides, as one of its terms an ability for the Authority to rescind or terminate the 121A Agreement. That provision is included in Item 19 of the contract and provides, in part: "Failure to comply with the provision constitutes a violation of the 121A approval and subjects the Project to 121A approval rescission at the election of the Authority".

In regard to the second discussion concerning whether or not taxes under Proposition 2½ for condominiums would result in fewer dollars for the City than the present Chapter 121A agreement, the attached memorandum from Boston Properties indicates that, at a minimum, the condominium tax revenue would still average over \$100,000 per year more than the 121A agreement for the next six years. This equates to approximately \$400,000 in new annual tax valuation even under this worst case analysis. Our own evaluation indicates the City will continue to receive substantially more taxes under the termination than it will under the 121A status.

On February 1, 1979, the Authority approved the Report and Decision concerning Commercial Building Trust providing for the creation of thirty three apartments and some limited commercial space in the Waterfront Project.

The applicants have now requested leave to amend the application to provide for the termination of the 121A approvals in order for the project to be marketed now as condominium units.

As you are aware, the building has been successfully rehabilitated in accordance with the goals of the plan to provide residential use; however, substantial structural problems were incurred in the rehabilitation to raise the cost almost 60% from \$1,600,000 to \$2,500,000. Based on these cost figures, the developers have indicated they are sustaining an annual net loss of approximately \$300,000

MEMORANDUM

SEPTEMBER 3, 1981

Termination of the 121A would facilitate the City obtaining approximately \$200,000 per year in additional tax revenue, which approximates almost \$800,000 of additional assessment on the City's tax rolls.

If the termination is granted, the developers have also guaranteed to insure payment in lieu of taxes through this fiscal year in excess of the 121A agreement, which additional payment in lieu of taxes would approximate the taxes for luxury apartments under a non-121A status.

It is recommended that the Authority approve the Amendment to the 121A Application and adopt the First Amendment to the Report and Decision providing for the termination of the 121A related documents regarding the project.

VOTED: That the document presented at this meeting entitled, "REPORT AND DECISION ON THE APPLICATION DATED AUGUST 5, 1981 (THE "APPLICATION TO AMEND AND TERMINATE") BY DAVID BARRETT AND ROBERT DeGAETA, AS THEY ARE TRUSTEES OF THE COMMERCIAL BUILDING TRUST, CREATED UNDER A DECLARATION OF TRUST DATED OCTOBER 23, 1978, TO AMEND THEIR ORIGINAL APPLICATION (THE "APPLICATION"), DATED OCTOBER 25, 1978, AND ENTITLED "APPLICATION OF DAVID BARRETT AND ROBERT DeGAETA, TRUSTEES, FOR AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASS. G.L. CHAPTER 121A, AS AMENDED, AND UNDER ST. 1960, c. 652, AND FOR CONSENT, TO THE ORGANIZATION OF COMMERCIAL BUILDING TRUST AS PROJECT OWNER" AND TO TERMINATE APPROVALS HERETOFORE GIVEN BY THE BOSTON REDEVELOPMENT AUTHORITY PURSUANT TO THE APPLICATION" be and hereby is approved and adopted, the Authority hereby taken and making the Action and Decision therein set forth.

